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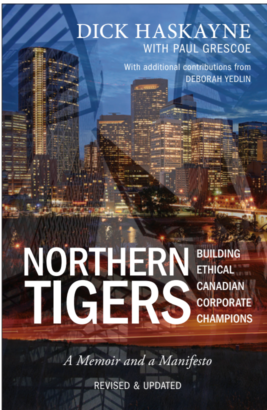

NORTHERN TIGERS: Building Ethical Canadian Corporate Champions

Dick Haskayne with Paul Grescoe

With additional contributions from Deborah Yedlin

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CHAPTER TWELVE

DIGGING FOR A DEAL

Fording Canadian Coal Trust

THE MEDIA QUOTED ME AS CALLING the proposed deal an “elegant solution”—that’s a phrase I’ve never used in my life, though I guess it did describe the agreement I was helping to broker with four warring parties. The *Globe and Mail*’s savvy Alberta columnist, Deborah Yedlin, said I’d been displaying “King Solomon-like skills,” which seems overly generous: I never threatened to divide any company in two, like old Solomon suggesting he’d split a baby between a couple of women claiming to be its mother. Actually, my colleagues and I were trying to make one big happy family by combining three medium-sized companies into a single Tiger with strong Canadian bloodlines. It would take us four months, and ninety thousand copies of each of seven offers and counter-offers to shareholders, and bitter negotiations with a friend—with me exploding in anger during last-ditch negotiations in the middle of the night. It involved the launch of one of Canada’s first major income trusts, then a hostile-takeover bid, a pitched battle of press releases, and a flood of disclosure documents throughout the Christmas season of 2002. The collective cost of just putting the deal together was about $100 million. Our goal was to consolidate the national coal industry to create the world’s second-largest metallurgical coal company, Fording Canadian Coal Trust.

You learn a lot in dealing with a hostile bid. As Stan Magidson says, “It requires critical decision-making by board members in a compressed time frame.” Stan, who heads up the business law practice in Western Canada for Osler, Hoskin & Harcourt LLP, had acted in the merger of NOVA and TransCanada Pipelines and represented the Fording board in our fight with Sherritt International Corp. and the Ontario Teachers’ Pension Plan Board. “These are real-time decisions,” he pointed out later when we were on a panel together at the University of Calgary. “They’re highly visible, and people read about them. And there’s a real possibility that the proponents of the transaction, if they don’t like what you’re doing, will sue you. So your judgment calls are subject to a lot of scrutiny and second-guessing.” All those pressures sure came into play during the war games we waged to determine the fate of Fording.

I’d got to know the company in the mid-1980s while I was president of Home Oil. Through its subsidiary Scurry-Rainbow, Home had a minority interest in a potentially huge coal development on the B.C. side of the Crowsnest Pass region of the Rocky Mountains. The other partners were Canada’s Stelco and several European steel companies. As we were contemplating the future of the project, I flew to Germany to visit the giant ThyssenKrupp steel operations and began to develop a relationship with some senior guys there. After due deliberation, the consortium decided not to proceed with the mining. My main ThyssenKrupp contact said his company wanted to sell its interest in the Crowsnest property and, because Scurry-Rainbow had the right of first refusal, was offering it to us. We didn’t want it, but we worried about who might acquire the interest. I said if ThyssenKrupp could find an acceptable buyer with mining experience and financial credibility, we wouldn’t stand in the way of any deal. They found this company called Fording Coal that was barely on my radar screen.

Enormous reserves of coal had been found in the Elk Valley region of southeastern B.C. in the late 1880s. It was only in 1967, after detailed exploration, that the area around the Fording River got serious attention. A year later, Canadian Pacific and Cominco

incorporated Fording Coal, opening a mine there in 1972. And in '86, CP took full ownership of what was becoming a major source of metallurgical (or coking) coal for export to steelmakers overseas, especially in Japan. CP was in the business because Fording, the biggest shipper of coal in Canada, was its biggest railway customer.

At the same time the Germans were unloading their share of the Crowsnest lands to Fording, we at Home decided to sell ours, too. That's when I met Jack Morrish, an engineering grad who'd been a marketing vice-president at CP Rail. He became chairman and CEO at Fording and turned into a hard-rock negotiator with the miners' unions. But he was an outgoing guy with a great sense of humour to go with his bold approach to the coal business. Once, when I asked him how Fording had succeeded, he said, "We knocked the top off Eagle Mountain"—the peak above Fording River where the company had its original open-pit mine. (Yes, I know, environmentalists will wince at his remark.) The day we were to meet in Home's fancy dining room to close our sale to Fording, Jack arrived early and asked if I'd become one of three independent directors, complementing the CP appointees, on Fording's board. Given that I had little knowledge of the coal industry, I was flattered, and I accepted in the spring of 1986.

Bill Stinson, CP's chief executive, sent a nice letter welcoming me: "Over the past few years, Fording has been one of the stellar performers in the Canadian Pacific group of companies. Now that the ownership of the company resides solely with Canadian Pacific, we look forward to Jack Morrish and his management team producing even better results as they expand and diversify their operations. The background and experience you bring to the Fording board will significantly assist Jack in these endeavours."

Among Jack's team was Jim Gardiner, a fellow engineer who was just as hard-nosed as Jack. Jim, bred in Saskatchewan, started as a construction engineer at a Cominco potash mine in his home province and at a coal mine in Alberta. In 1970, he joined Fording in the same role to help build its first mine near Elkford in B.C.'s Elk Valley. After going back home for a while to deal with a problem potash mine, he returned to the Fording coal operation

in the mid-'70s as operating superintendent. Jim was on a fast track, moving from general manager of the mine to GM and vice president and, in '86, VP of all of the company's operations from its Calgary headquarters.

By then, Fording was running the Whitewood mine in west-central Alberta under contract from TransAlta, supplying the electrical utility with thermal coal to fuel power-generating stations. Fording soon had a similar arrangement with EPCOR Utilities in the nearby Genesee mine. It would also have mines in New York State and Mexico that made it the world's largest producer of wollastonite, an industrial mineral used in ceramics, plastics, and paint applications and as a substitute for asbestos.

At the time, it wasn't a publicly owned enterprise and had only a single shareholder: CP Ltd. I became chair of Fording's audit committee and, over the next decade, observed the major financial ups and downs as coal prices ebbed and flowed from less than $40 (U.S.) per metric tonne to a high of $53. All this while, Jim was pushing the unions to improve productivity, and near the end of the 1990s, the so-called "Asian Economic Flu" slammed the economy of Fording's customers in Japan, Taiwan, and other countries. Yet as the millennium dawned, Canada's largest export-coal producer was positioned for growth. With a capacity of more than twenty million tonnes of metallurgical and thermal coal, it employed 1,900-plus people and its revenues exceeded $890 million. Jim Gardiner, as chief operating officer, had some good people working with him. Jim Popowich, who'd been a planning engineer and shift supervisor in Cominco's potash mines, was now Fording's VP of development and Alberta operations. And Allen Hagerman, my young colleague from HBOG, Home, and Interhome Energy, had arrived in 1996 to find a company that was surprisingly sound despite the horrendous challenges of its industry.

"Mining companies in Canada don't make money, and Fording made money," Allen reminisces about his time as chief financial officer there. "Probably the best-run mining company in North America anyway, and they were producing metallurgical coal with

mountaintop mining. Which is a gutsy thing to do—to take the top of the mountain off and deal with it once. This is a company that has productivities that are twice as good as their next-door neighbours, using the same equipment and with the same geological conditions. And on a par with the Australians, who are flatland miners who just get to roll their coal down to the ocean.

"This is a company that had taken a three-million-tonne mine and turned it into a ten-million-tonne mine—at the time, the largest metallurgical coal mine in the world. It bought a couple of other mines out of bankruptcy and, by sheer will and expertise and focus on cost and profitability, managed to eke out small profits in bad times and great profits in good times. Mining is an operating-cost business, not really all that capital-intensive, and you have to have that focus on it.

"When I joined in 1996, there were pretty good times, and then we went into some lower prices and things got pretty difficult there in '98 and '99. They started to get a little better in '99 and really turned around in 2000 and 2001.

"As CEO, Jim Gardiner was not laid back. He's tough and opinionated. He runs the show. But Jim does listen and is very, very smart. He's a brilliant mining engineer, a linear thinker, and a very good financial person, too. He was the guy who made Fording so profitable—but he is not an easy man to work for. He is detail-oriented and wants to control all the decision-making."

Bill Stinson once told me that Fording was the best-managed company in the Canadian Pacific conglomerate. So when his successor, David O'Brien, decided to spin off the member companies of the CP group as publicly traded independents in early 2001, the coal operation was considered plum pickings for a takeover.

A year earlier, David had asked me to be chairman of Fording's eight-member board—"this sleepy little company," as he then described it. Now, heading out on our own as a stand-alone venture, we replaced four directors with Jim Popowich, who had become the executive VP; Roger Phillips, who'd been on the CP board and was the about-to-retire head of Regina-based Ipsco, a leading North American steel producer; and two fellows, Harry Schaefer

and Mike Grandin, whom I knew from my previous involvements with other companies.

Harry Schaefer had been CFO of TransAlta, a director of Crestar Energy, and then a director of Gulf Canada Resources when it acquired Crestar and was now vice-chair of TransCanada Corporation. Heavyset, with a high forehead and a deep voice booming from a barrel chest, he was probably the strongest audit-committee chairman in the country, a role he'd play with distinction at Fording during the drama that was soon to unfold.

Mike Grandin, raised in Calgary, is an accountant's son ("That's a frightening thought, eh?" he would ask with a laugh) who's had a pretty checkered career. After studying structural engineering at the University of Alberta and working for Dome Petroleum as a summer student, he designed dams and other large projects for Montreal Engineering and partnered in a small pre stressed concrete company. He got his MBA at Harvard at age thirty-two and, for a couple of years, worked for the management consulting firm Arthur D. Little in Boston on petroleum projects in Saudi Arabia and New Zealand.

Returning to Canada in 1979, Mike joined the corporate planning and economics group at Dome just as Jack Gallagher and Bill Richards were evaluating Hudson's Bay Oil and Gas. As HBOG's president, I met Mike briefly (and uneventfully) during that traumatic time. He wound up as the first general manager of the subsidiary Dome Canada and then as VP of land for the parent company. Fleeing that crumbling empire in 1986, he ran the Calgary investment banking practice of McLeod, Young & Weir & Co (now Scotia Capital), followed by stints as CEO of Calgary's troubled Sceptre Resources (until it was bought by Canadian Natural Resources) and as vice-chair of investment advisors Midland Walwyn. In 1998, David O'Brien hired him as CFO of Canadian Pacific—where Mike helped unlock the conglomerate's value into spin-off companies—and had recently brought him over to preside briefly at PanCanadian, just as Alberta Energy's Gwyn Morgan came courting and was leading the merger to create EnCana.

These newcomers joined Fording's current directors who, along with me and Jim Gardiner, were ex-chairman Jack Morrish, now chair of Westshore Terminals Income Fund, which operated a major coal terminal near Vancouver, and John Zaozirny, a lawyer with McCarthy Tetrault in Calgary, vicechair of Canaccord Capital Corporation of Vancouver, and a former minister of energy and natural resources for Alberta. Within a year, we'd bring on Bob Peterson, the long-time chair and CEO of Imperial Oil. Bob is a great friend of mine, a tough little bugger, and one of the smartest guys I've worked with ever since the time we were on the Interprovincial Pipe Line board and the joint-venture Syncrude board in its early years. And he served as a Petroleum Club director during the time it voted to admit women.

THOSE WERE THE PLAYERS at Fording in late 2002 when we decided to try to protect ourselves from possible corporate marauders. Only a year before, under a headline reading "Fording isn't a lump of coal—it's a keeper," *Globe and Mail* business columnist Brent Jang had neatly summed up the state of the Canadian coal scene and Fording's part in it:

> [A]lthough Canada's coal industry has gone through plenty of tough times since the Asian economic flu of late 1997 reduced demand, Fording's low-cost operations coupled with improved commodity prices are fuelling a rebound.
>
> In mid-1996, the Mitchell family, formerly of Edmonton, sold Luscar to create a publicly traded coal income fund. And in the fall of 1997, Calgary's Mannix family had the Midas touch when it unloaded Manalta Coal, just before the Asian economic flu spread. Manalta also became an income trust fund.
>
> In 1998, Luscar succeeded in its hostile takeover of Manalta. Then earlier this year [2001] Sherritt International

> teamed up with the Ontario Teachers' Pension Plan Board in a hostile takeover of Luscar.
>
> Manalta and Luscar were victims of slumping markets for thermal coal, which is used to fuel plants that generate electricity.

Our board was looking at ways to shield Fording from the vultures circling out there—among them, the London-based Rio Tinto Group and heavyweight Australian steelmaker BHP Billiton Ltd., the world's largest diversified resources company. We believed that putting the company into an income trust might be the answer. At the time, the Ontario Securities Commission defined such trusts as follows:

> An income trust is an entity that holds an underlying asset or group of assets. Most of the income these assets generate is distributed to unitholders. In contrast, publicly listed companies usually retain and re-invest their earnings, and sometimes pay out a small portion of earnings to their shareholders as dividends. An income trust structure is formed when, instead of offering its securities directly to the public, an operating entity creates a trust. The trust offers units to the public and uses the proceeds to purchase the common shares and high-yield debt of the operating entity. The combination of the trust's equity and debt holdings allows the income to flow through to unitholders essentially tax-free.... The trust structure avoids the double taxation that comes from combining corporate income tax with shareholders' dividend tax.

In other words, the corporate entity in the trust doesn't pay taxes on its income—the investors do. As a result, the value of the company's shares is inflated and it's therefore much less attractive as a takeover target.

Royalty trusts in the oil and gas sector and real estate investment trusts had first shown up in the 1980s. Income trusts, or

"income funds" as they're sometimes called, were relatively new instruments in Canada, and ours would be one of the earliest and biggest. Since the spring of 2002, we'd discussed the idea of creating a trust, consulting with the people at RBC Dominion Securities and Osler, the business-law firm. We figured Fording was a natural for this financial vehicle because it had long-life reserves of coal, was well managed, and, being virtually debt-free, didn't require any financing. At first, Jim Gardiner didn't agree, pointing to our coal competitor Luscar, which had been a limping income fund when Sherritt took it over. (He wasn't alone: In the view of his CFO, Allen Hagerman, "Manalta became a basket case and was bought out by Luscar, who then became a basket case because of the debt they took on. And we had a concern that being a trust contributed to their debt.")

"Jim," I said rather forcefully, "you don't understand it. Luscar had a lot of debt. We have no debt. The board is telling you that this has got to be done—whether you like it or not."

As Harry Schaefer says, "The board was concerned that this [trust concept] hadn't been looked at with some seriousness. In a June meeting, there were very strong marching orders from the board to review this and get the investment bankers to help show it to the management team. It took till the fall before it clicked for them. If you have a management that comes from an operating scenario, in an environment where two other coal trusts have got into financial difficulty, they're not going to destroy their well oiled machine getting into this funny financial thing. And if they're more *operating* mentality, they don't necessarily understand the financial arithmetic of the trust and its implications. So you have to get them there."

Jim's memory is that John Zaozirny had first started pushing the concept on him, "and we had a mindset that this was not such a good thing. But we realized that circumstances change, and the company was becoming so highly taxable that it looked like a really good model for us." Like me, Jim was also a strong nationalist and wanted to keep the company Canadian at all costs. I was concerned that, unless Fording became a trust, we'd someday

get a blowout offer from BHP or Rio Tinto that our shareholders couldn't refuse. And that would leave the Canadian coal industry as a lackey to overseas interests. Yet even then (as I'll explain in the next chapter), I had reservations about the many ramifications of such trusts and their general application to individual companies in various industries.

We code-named the trust scheme "Project Willow," which suggested waving wheat fields and a gentle environment. RBC, our investment bankers, designated their role in it "Project Desert Storm," as if it would be a battleground with all guns blazing. That fall, our plans were proceeding well when suddenly—seemingly out of nowhere—an old buddy and fellow director blindsided us.

Sitting with me on the boards of both MacMillan Bloedel and EnCana, Ian Delaney, the CEO of Sherritt International, had told me, "Despite what people think, coal is the future." And he also remarked that Fording wasn't likely to last long on its own because there were bigger corporations considering it for a takeover—whether friendly or hostile. Mike Grandin remembers that Sherritt had once talked to Canadian Pacific, when it still owned Fording, about acquiring some of its thermal-coal properties. At that point, however, CP was trying to strengthen the coal company before shedding it as an independent and just wasn't interested in doing any such deal. Yet interestingly enough, Jim Gardiner recalls, "Until Sherritt took over Luscar, I had never heard of Sherritt and Delaney and company before." Then in 2001, Sherritt had approached Jim's people about swapping Luscar's metallurgical-coal operations for our thermal-coal holdings but couldn't agree on a deal.

So there was a bit of history between them and us. And I had considered Ian Delaney to be a pal, someone I'd originally got on to the board of EnCana's predecessor Alberta Energy Company. I knew the tall and intense fifty-nine-year-old as a relentlessly independent-minded character—a shrewd financial whiz who'd dropped out of college yet became president of Merrill Lynch Canada (where he was dubbed the "Smiling Barracuda of Bay

Street"). His wife, Kiki, ran Delaney Capital Management, which handled billions of dollars of mutual funds, and some observers (Peter Newman among them) called her and Ian "Toronto's Power Couple," whatever that meant in that town.

This was a guy who went on to work for Peter Munk, the charismatic Canadian who turned the Barrick gold-mining operation into such a bonanza and built his own real estate colossus, TrizecHahn, out of the ashes of the Bronfman family's failed Trizec Corp. Ian was CEO of Munk's holding company, Horsham Corp., and even when the boss he'd idolized actually fired him, allowed graciously that the move was long overdue. Ian had held shares in an old established nickel and copper producer, Sherritt Gordon of Toronto. In 1990, he and a partner from Horsham seized control of the mining company in a bitter proxy battle ("I want your job and I want your company," Ian had told the current president). Their first major move as Sherritt International was to get into bed with Fidel Castro, and over the years, they began nickel and cobalt mining in Cuba as well as investing in petroleum, agriculture, electricity, cellphone operations, and hotels in one of the world's few lingering Communist regimes. They didn't endear themselves to the American government, which forbade trading with Cuba and, therefore, barred Ian and his colleagues from entering the U.S. Of course, that didn't faze him. I liked Ian and all the interesting bag gage he brought along with him. And I was pretty sure he liked me.

Why in the hell, then, he ever decided to have Sherritt and the Ontario Teachers' Pension Plan Board launch an unfriendly bid for Fording, I'll never know. (Well, I might eventually: Ian has since said he'll tell me someday over a beer.) For whatever reason, on October 21, 2002, Ian and Teachers' vice-president Brian Gibson collaborated as the Sherritt Coal Partnership II to make an unsolicited all-cash offer of $1.5 billion, or $29 a share, for our company. They were deliberately lowballing us, given that our shares closed on the stock market that day at $31.65 and analysts were saying that our stock should be worth closer to $34—it never did go below $30 after that. At the time, Teachers' had been buying our stock and held about 6 percent of the shares.

That Monday morning, I was at home getting ready to fly to a Fording board meeting in Mexico, where we'd be inspecting a local wollastonite mine. In only a couple of days, we expected to make public our scheme to become an income trust. At 7:30 a.m., Ian and Brian called me to say, "Haskayne, we hate to tell you, old buddy, but later this morning, we're going to make this takeover bid"—and spelled out their plan to announce the hostile tender at what I considered to be a very chintzy price.

"What's your reaction?" they wanted to know.

"It's going to be pretty damn negative," I replied. "If the number even started with a 3 rather than a 2, you might be a helluva lot better off. You're going to have an awful time with us, I can tell you right off the bat."

And that's where the game started. Perhaps Sherritt/Teachers' got word that we were about to do our own trust and wanted to make a pre-emptive strike. Harry Schaefer has also speculated that their opportunistic offer might have come that day because "they had knowledge we were going to have the trust, which would have popped the stock, and they would have had trouble competing against it."

Speaking to reporters later about the aggressively presented bid, Ian said, "There's no particular magic to it—it's certainly a way of forcing a discussion." Upset as hell, I got on the phone to my directors, including Bob Peterson, who'd already flown from Toronto to Los Angeles en route to Mexico.

We cancelled our own flight south and immediately held a board meeting by telephone. After an information session, we gave everyone time to let the details soak in before making a decision. Stan Magidson, our legal counsel, asked us: "What are you going to do?"

Harry Schaefer reminisces, "All our directors are set to go to Mexico that morning to inspect the properties and come back on Wednesday to announce the conversion to an income trust. Then you get this release [from Sherritt/Teachers'] heaved over the gunwales. Our stock had been down at the $21 or $22 level, and we knew that the income trust would probably bring it through $30.

A number of us thought that Sherritt had got wind of what we were doing and wanted to get their offer in before we announced. So we then sat back, being careful to move into the mentality of a special committee of the whole board about how to respond. It's not just saying no. Your job is to make sure you understand the value, where you sit on the offer, make sure you don't eliminate alternatives, and think the course forward. So you had to put aside where you were going, for the moment, and re-evaluate your responsibilities and put this new bid into context: Do we just abandon the income-trust avenue, or is that still a viable alternative? We had to reassess from square one our due diligence."

We decided to announce the creation of Fording Trust in the next few hours and to ask our shareholders to exchange their stock on a one-for-one basis. Once we did, some analysts decided our shares could be worth up to $40, which made Ian's offer look even paltrier. As Stan says, "We went out with a strong press release. We know that it was a great surprise to the other side. Nobody could believe you would have an income-trust announcement the same day the offer was made. I'll call it good luck, and fortuitous, but maybe there was an element of being prepared, as well."

Immodest as it sounds, we'd deliberately put into place a strong slate of directors, and I considered myself a strong, independent chairman—together, we felt highly capable of handling any kind of takeover attempt, even one from the combative Ian Delaney. We delegated assignments to different board members with special expertise. At every meeting, we'd have in-camera sessions without senior executives present to deal with the inevitable tensions that arise between board and management during a takeover attempt. Our skills and resolve would get tested over the next four months. Looking back on what we had to face, Stan recollects, "There were seven value-enhancing propositions from bidders to consider, numerous disclosure documents, and I recall twenty-two board meetings. One meeting went about twelve hours with an open telephone line because there were negotiations occurring in Toronto and we had people on standby—it was that dynamic."

Ian and his colleagues soon came to meet me in Calgary to discuss their offer. But at first they were maddeningly fuzzy about the details. "Look it, you guys," I said, "let us know exactly what the hell it is, because we're about to create our own trust."

In early November, our board made it known that the company was looking for alternatives to Sherritt's initial cash offer. As the *National Post* reported, "Fording executives had come under fire from investors for standing by a plan to reorganize the firm into an income trust, rather than seek a friendly bid to combat the hostile offer." But, as the *Edmonton Journal* commented, "if the takeover battle for Fording heats up, it's clear that the big foreign players hold all the aces. Their deep pockets and lower cost of capital are huge advantages in any bidding war. That's bad news for Canada's struggling mining sector, which over the past two decades has been relegated to second-tier status on the world stage."

Not long after, I got a call from Norman Keevil, chairman and controlling shareholder of Teck Cominco Ltd. of Vancouver, formed from the recent merger of the two companies to become the world's biggest producer of zinc. Among its $5 billion in assets, it also had copper and gold mines as well as metallurgical-coal operations near ours—the Bullmoose and the big Elkview mine, the fifth-largest in the world. The son of a geophysics professor-turned-tycoon, Norman Jr. was a geophysicist, too, and inherited his father's company, stage-managing Teck's mightily profitable investment in the Voisey's Bay nickel discovery in Labrador. I was aware of Norm's reputation as a gentleman in an ungentle industry. He'd recently been honoured by five hundred guests at a gala dinner with eight speakers, including B.C. Premier Gordon Campbell and Canaccord Capital's Peter Brown.

Now he was saying that while we didn't really know one another, "You're hanging in my boardroom."

"What does that mean?" I asked.

It turned out that he had a *Canadian Business* chart rating various boards of directors of Canadian companies. I was on three of the best twenty-five boards—Manulife, CIBC, and TransCanada

Corp.—and Teck Cominco ranked among the worst (likely because of its structure of multiple voting shares that gave their holders the right to more votes than warranted by the amount of capital the stock represented).

My recollection is that there was another voice on the phone that day, a power hitter by the name of Jim Pattison. I'd got to know this compact dynamo while serving on the MacMillan Bloedel board in Vancouver, where The Jim Pattison Group has its headquarters. Of course, Jimmy's reputation was well known to me: one of North America's wealthiest entrepreneurs, owning everything from supermarkets, car dealerships, and radio and TV stations to packaging, sign, and news-distribution companies (and even the Ripley's Believe It or Not! chain of tourist attractions). But his most relevant connection to the matter at hand was his controlling share of Westshore Terminals in Delta, B.C., which shipped out nearly three-quarters of Canada's seaborne coal exports—Fording's among them. And the head of Westshore now was Bill Stinson, the boss of Canadian Pacific who'd welcomed me so warmly to the Fording board all those years ago.

They had my attention.

"Dick," Norm continued, "I think we might have a proposal that might help out." He wanted me to meet him and his new CEO, David Thompson, whom I didn't know.

Were these our white knights? And *Canadian* ones, at that? At that point, our backs were to the wall as the Sherritt/Teachers' offer seemed to be winning the war of public perception, appearing to be the best possible deal for our shareholders. "Well," I told him, "we have a critical meeting at 10:00 a.m. tomorrow, and if you have something better, let me know because we don't have much time. Make a counter-offer, or do something."

So, if memory serves me, Norm, Jimmy, and David all flew from Vancouver that very day in the Pattison jet and came to my office. David proved to be a solid guy with a chartered-accountancy back ground, reputed in Canadian mining circles to have "the sharpest pencil in the business." As a former senior VP and CFO at Teck, he was Norm's closest advisor ("Keevil doesn't breathe without talking to

Thompson," people observed). All in all, a pretty impressive bunch who were about to change the dynamics of the deal in the making.

When we began formal talks on November 27, things got off to a bumpy start. They wanted to do a partnership with Fording, which made no sense to me: "Why don't you just take shares in the trust? We'll put a fair value on your big [Elkview] coal mine, and you'll end up with a very big interest in Fording." The problem for them was that sort of an arrangement would have meant paying taxes because they'd be taking liquid securities. And, as Harry points out, "Under the pressure of the bid, Teck Cominco talked to Fording about consolidating all their mines in the valley—and there was a tussle as to who'd operate those mines." Another sticking point was that the companies were competitors, and at times, in certain areas and with certain people, there was a lack of respect between them that had to get resolved. So the proposed deal was complicated from day one. We all decided to consider our options and reconvene as soon as possible.

The following day, Jim Gardiner, Allen Hagerman, and I met in my office with Ian Delaney and his CFO, Jowdat Waheed, to present what was supposed to be a more acceptable bid for Fording than their original one. I basically booted them out, saying, "Delaney, it is *un*acceptable." During the negotiations that followed, Gwyn Morgan recalls how Ian and I would excuse ourselves at different times from our directors' chairs during EnCana board meetings to take telephone calls about the progress of the deal-making. "It was like *The Gong Show*," Gwyn says.

By December 4, after much back-and-forthing, Fording had arrived at a complex agreement with Teck Cominco and the Westshore Terminals Income Fund. It was valued at $1.7 billion and $34 a Fording share—$5 more than Ian's group had been offering. We'd combine our coal businesses in a new income trust that would give Fording shareholders a maximum payout of $795 million, or a combination of cash and trust units if all shareholders elected to receive cash, and more than 70 percent of the units. Teck and Westshore would contribute $540 million in cash to the trust, while we would remove Fording debt of $255 million from

the trust. We now called this an enhanced income trust because it included Teck's terrific Elkview mine as part of the package.

But in this hectic corporate tennis game, Ian Delaney kept the ball in the air during the walkup to the Christmas season. At his urging, we agreed to host a meeting of all the major players with Jim and me: Ian, Brian Gibson, Norm Keevil, and David Thompson. When we gathered across the hall from my office in Ted Newall's larger boardroom, they were soon asking Jim to take his leave. I wasn't happy with this request, and Jim was insulted, but they all insisted. The rest of us then met for several hours—and the reason for the absence of Fording's CEO at the session was quickly apparent. Ian had been buttering up Norm and David and supporting their idea of having Teck Cominco as the management of a merged company. At one stage, even David got embarrassed about Ian's smooth talk and said something like, "It's nice of you to say all this, but I can't accept any more compliments."

Nothing concrete emerged from that sixteen-hour session. On December 17, we put out a release advising Fording shareholders not to give their proxy votes to Sherritt/Teachers'. "We don't have a formal offer from Sherritt," I said. "We have only the information in their announcement, which leaves a number of important questions unanswered."

The next day, their offer finally surfaced as a 340-page document. The bid, worth an estimated $1.8 billion by their reckoning, at first glance seemed a better deal. Until you read the fine print, as Stan explains: "The $34 offer [of the proposed Fording/Teck/Westshore trust] did have the desired effect: Sherritt/Teachers' then announced their new deal, bumping up from $29 to a $35 cash offer with a unit of an income trust—but which didn't have the Elkview mine from Teck and did have the thermal-coal properties of Fording being sold to Sherritt/Teachers' and not being available to the Fording shareholders. There was a lot of dispute about the value of that trust unit."

In an initial release to the media, which was heavily lawyered and contained language Richard Francis Haskayne has hardly ever used in public, I was properly scathing: "Shareholders

should not be fooled by the new offer. Its bulk does not hide the fact that the offer is based on questionable assumptions and is inaccurate in a number of areas.… In my twenty-five years as a corporate director in Canada, I have never been presented with a more questionable document than the new Sherritt offer. It is a 'smoke-and-mirrors offer' that provides a little more cash offset by a lot less unit value."

Among other things, it would transfer $210 million in value from Fording shareholders. Two days before Christmas, we sent a mail-out asking them to reject the bid, and a week later, gave them a more formal response in a circular. Harry was the board's quality-control guy, acting almost like a member of the management team during the negotiations: "We were quite offended by what Sherritt/Teachers' had in the store window and what the reality was. They said they were buying at $35, but on page 89 of the trust deed, they were issuing shares to themselves at $28.41. In addition, they were swapping out our thermal coals at the same price as their metallurgical coals—and ours had earnings, and theirs didn't. Our circular to them pointed all this out."

In another news release I'd taken a shot at Teachers': "Given the strong stand the Ontario Teachers' Pension Plan Board has taken on governance issues in the past, we were surprised to see the approach they are supporting. In particular, their refusal to provide an appropriate amount of time for our shareholders to consider their offer." Just a day before Christmas, Justice Sal LoVecchio of the Alberta Court of Queen's Bench had embarrassed Sherritt/Teachers' into extending their January 6 deadline for the takeover offer.

Throughout all this, as we were to discover later, Teachers' really hadn't wanted to steal Fording at a bargain-basement price. Its vision, under the leadership of Brian Gibson, was to do a deal that would consolidate and strengthen the Canadian coal industry. I wrote a letter to Brian that expressed surprise at the terms of the counter-offer and what we considered its lack of proper disclosure. As Stan says, "We were going into a board meeting about January 2 with legal papers ready to go that would have

blown the Sherritt/Teachers' proposal out of the water as being illegal in structure from the perspective of the SEC [the U.S. Securities and Exchange Commission, which administers federal securities laws for companies operating in the U.S.]." One concern was that American shareholders might get all the cash being offered because the trust units that were part of the deal might not be issued in the U.S. for several months—which would leave Canadian investors holding only those units but no cash.

We didn't have to take any legal action. Harry says, "People might say our letter to Teachers' had no effect, but piecing things together, we discovered that they hadn't known about some of the things in the earlier offer. So they were coming apart from their partners' cause that's not the way they wanted to play. Brian Gibson now became clear about what Sherritt was doing—and their interests were not the same.

"Then over the transom on January 6 [2003] came a very good counter-proposal from Sherritt/Teachers' that got rid of some of the more shabby pieces of the transaction. Brian was starting to come back into the deal with his bigger vision and the wonderful prize of putting all the metallurgical mines together."

Stan remembers, "We saw another raise by Sherritt/Teachers'—they were still at $35 and a trust unit, but now they were going to allow for a lot more cash in the transaction." This revised offer would pay out as much as $965 million in cash (an increase from $850 million) and extend the guarantee for cash distribution to the end of 2004 instead of 2003. If all shareholders elected to take the $35-a-share cash option, they'd receive $20 a share (up from $17.63) and 0.429 of a right to a trust unit. There was no mention then of including Teck Cominco's assets in the deal.

I kept wondering if we could somehow put all the companies together and create a global force in the coal industry. As Stan says now, the turning point probably came "when each party thought that there was enough uncertainty that they might lose out on something—when we'd created the requisite tensions necessary to get everyone agreeing to a deal." Sherritt's much better bid now triggered serious talks during the second week of January

in Toronto, where Ian and Brian were based. They were in the meetings along with David Thompson, Jim Gardiner, Allen Hagerman, me, and Michael Korenberg, Jimmy Pattison's right-hand man, representing Westshore's interests.

Backing the negotiators was the usual armada of legal and financial advisors that such a merger requires. Sherritt/Teachers' had five key lawyers from the prestigious Torys firm in Toronto (and, the *National Post* added, "a cast that exceeds *The Ten Commandments*, the Cecil B. DeMille version"). Teck Cominco had five main counsel from equally prominent Lang Michener as well as their in-house lawyer. We had mergers-and-acquisitions expert Frank Turner, a partner in the Calgary office of the highly respected Osler, leading a group that included Stan Magidson on corporate and M&A matters, Chris Murray on income trusts, and Don Watkins and Jack Silverson on tax. Not to mention all those investment advisors: Goldman Sachs and BMO Nesbitt Burns for Sherritt, CIBC World Markets for Tech Cominco, and RBC Dominion Securities for us.

After long days and nights fuelled by fast food at Osier's office, I was getting tired and stretched tight along with the others who were trying to put the finishing touches on a restructured income trust. Finally, with everyone compromising a little, it looked like we'd reached an all-party agreement. Allen remembers being in the boardroom of the Sherritt headquarters with David, who was a pivotal player in shaping the transaction. They'd been sitting around since early afternoon to talk about the deal with Ian—who had a comfortable suite upstairs where he often retreated, sipping wine and catching naps.

I was with the negotiating group at about 2:00 a.m. the next morning when Ian called me up to his office for what I thought would be a last-minute bit of bargaining.

Instead, he said, "Dick, I have to tell you: The deal is off, we're not going forward."

Thunderstruck, I just lost it, waving my finger at him and exploding: "Ian, this is bullshit! We've cobbled this deal together, and I'm telling you that what you're doing now is dishonest. And I'll tell you, we'll let the world know how you guys are reacting." When Ian

announced his decision to the others, David Thompson joined me in lecturing him about the merits of the deal.

To this day, I don't quite know why Ian was backing off. Maybe he'd got cold feet because of the magnitude and all the ramifications of the merger. When I came downstairs, obviously enraged and ready to walk out, Stan said, "Dick, you'd better cool off down here. Are you prepared to go to the mat on that and give up a triple play?"

"I don't care. I'm not going to put up with that bullshit."

At that point, Brian Gibson stepped up to the plate. I've always got on well with the highly responsible head of Teachers'. Calming me down, he said the deal was not off and asked for another immediate meeting—and that's where cooler heads prevailed and Ian agreed to do the deal, after all.

Jim Gardiner was so concerned for me, worrying about my physical condition and the stress I'd been under, that he quietly used his American Express card to book a flight that would get me back to Calgary early that morning. The terms of the deal were made public on January 13.

A long time later, on a panel discussion about mergers and acquisitions with Stan and Harry at the University of Calgary, I said, "In every deal I've ever been involved in, personal relationships either make them happen or tear them apart. Keep these relationships at a high level. It's one thing to beat one another like hell in a corporate scene, but don't get into personal animosities.… If you don't have a good personal chemistry, or you don't respect the other person, the deals won't work or will fall apart at the worst time." In the end, the respect that Ian and I held for one another had carried us through that last-minute crisis.

A couple of years later, while contacting him about some human resources committee matters involving EnCana, I remarked, "Jesus, Delaney, I read in the paper this morning that you're trying to take over Stelco. You're trying to do the same thing you did to us."

"Oh yeah, we are," he said, "but it's much easier this time—for two reasons. Number one: We don't have to deal with you. And number two: They're broke and you weren't."

We continue to be good friends. Not long ago, he invited me to join him on a trip to visit some of Sherritt's properties in Cuba. There's an old Cuban saying that, translated, means that you can show courtesy and courage at the same time. I like to think that, despite our differences in the Fording merger, we've both demonstrated those qualities during our long business and personal relationship.

If I drew any lesson from the Fording affair, it would be that in any takeover attempt, it's wiser to go in friendly first and try to make a deal. There's nothing to lose—you can always turn hostile later, if you must. But if you don't have to, you've saved yourself an enormous amount of time, money, and hard feelings. A good recent example of what can go wrong is the breakdown of the proposed $17.8-billion "made-in-Canada" merger between Teck Cominco and the mammoth silver miner Inco Ltd. Industry observers say the chemistry between Teck's new CEO, Don Lindsay, and Inco's Scott Hand was sour from the start of Teck's unfriendly takeover bid. Not surprisingly, Inco (where David O'Brien was on the board) sought another suitor, which turned out to be the American mining giant Phelps Dodge Corp. And, as a result, Canadian industry lost two important senior Tigers.

OUR SHAREHOLDERS LOVED the creation of the Fording Canadian Coal Trust, approving the now-friendly deal by more than 99 percent at a special meeting in Calgary. I joked to them about the overheated language of our press-release war by describing the proposal as "the improved/enhanced/superior/alternative plan." It was a $1.8-billion agreement that gave Fording shareholders the options of $35 cash per share, to a maximum of $1.05 billion; or one unit of the Fording Trust per share, to a maximum of about 21.4 million units; or a combination of cash and units to those ceilings. Unitholders would also be entitled to a special distribution of $1.48 per unit in the following two quarterly distributions.

It was a convoluted deal, even for someone who'd been involved from the beginning, as I was. Harry Schaefer says I'm the

big-picture man and he's the detail guy, as he was while keeping watch on Fording's interests. And, in the final analysis, we did all right on the transaction. The ownership breakdown had Teck contributing its metallurgical coal assets and $125 million in return for a 35 percent stake in what was called the Elk Valley Coal Partnership. The other 65 percent was Fording Trust's, in which Fording investors held 38.8 percent; the Sherritt Coal Partnership 11 (Sherritt and Teachers') contributed $375 million and held 22.7 percent, in which Teachers' itself held 6.7 percent; Teck Cominco contributed $150 million for 9.1 percent; Westshore contributed its coal terminal and $150 million for 9.1 percent; and two Sherritt subsidiaries—Luscar and CONSOL of Canada—contributed their joint-venture coal assets for 6.8 percent. (CONSOL, with its parent company in Pittsburgh, had proved to be a frustrating nitpicker during the negotiations, and in Mike Grandin's words, this "caused us a huge amount of agony—they wanted the deal done precisely their way.") Oh, and the Sherritt partnership bought Fording's thermal-coal assets for $225 million.

The collective cost of doing all this deal-making—from mailing out all ninety thousand shareholders' circulars at one time to paying the pricey fees of the lawyers and investment advisors—was about $100 million. Fording swallowed the expenses of Teck Cominco and Westshore as well as its own.

The media hailed the merger as "a victory for all parties," which would establish "one of the world's most formidable mining firms." And with the approval of the shareholders and then the Competition Bureau, my work was done. It was time to move on after seventeen years on the board, to step down from yet another chairmanship, and to step away from its pressures of time and emotional and physical energy. Time to have travel adventures and to relax more with Lois and our friends. And to give myself space to think and talk about, and perhaps even act upon, the three themes that seemed to have been looming so large in my life and career: private philanthropy, business integrity, and Northern Tigers.

But who to replace me as chair of the Fording Canadian Coal Trust and ensure its future as a thriving Tiger? Mike Grandin

hadn't been actively involved in the negotiations, but as a conscientious and informed director, he had kept a watching brief on their progress. And the chairmanship somehow seemed a fitting follow-up for the man who, as Canadian Pacific's CFO, had helped create the conditions that let Fording fly out on its own from the CP nest. During the last days of the bargaining with Teck and Sherritt, Mike had been off on a month-long holiday in New Zealand with his wife, Elaine. He was just enjoying his second week there when our board members made a conference call to him in his hotel room. "I'm stepping down," I told him. "We need to have a new chairman, and Michael, by the way, we've discussed it—and we think you are it." Because we were about to send out a press release announcing the new board, we had to name the chair. When Mike put the phone down, he turned to his wife and said, "Well, you'll never guess what they asked me to do."

He accepted and took over a mixed bag of consolidated companies. At first, the different corporate cultures led to conflicts at the senior levels, especially since Teck Cominco was now considered to be the managing partner of the trust. In 2004, a year after the merger, Jim Gardiner retired and Jim Popowich succeeded him as president, with Mike as CEO as well as chairman. When China went from exporting eight to ten million tonnes of coal a year to having to import about half that amount, Fording's profits soared as coal prices more than doubled—to $122 (U.S.) per tonne. In 2006, as the Chinese demand ebbed, the average selling price was forecast at $107.

Today, Jim Gardiner looks back on the dramatic change in the companies that were hived off from Canadian Pacific Ltd. and says, "I give David O'Brien a lot of credit for letting the companies get out there on their own and spread their wings." David looks at Fording and says that while its market capitalization is a seventh of EnCana's, it has been hugely successful. If it's not yet a Northern Tiger according to his definition—"powerhouses that are sufficiently large and diversified that they can compete around the world"—it's a big and strong player in its particular niche. He prefers to call Fording "a Canadian-based global champion."

I call it a Tiger. As I told shareholders at the meeting where they approved the new trust, "Giving Gwyn Morgan some credit, it's the EnCana of the coal business, a very dominant company not likely to be taken over by virtue of its size and also the trust structure. In my view as a Canadian, these are the kinds of companies—the kind of institutions—we need in this country. And we need more of them."